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In re Application of	:	OFFICE OF PETITIONS
Fumihito Muramatsu et al	:	
Application No. 09/351,521	:	DECISION ON PETITION
Filed: July 12, 1999	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 31879	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 8, 2004, requesting withdrawal of the above-identified application from issue.

The petition is dismissed as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowability was mailed on May 21, 2003. However, no Notice of Allowance and Issue Fee(s) Due was mailed at that time. Thereafter, on February 5, 2004, the Office mailed a second Notice of Allowability and a new Notice of Allowance and Fee(s) Due. The Notice required submission of the issue fee to be paid on or before May 5, 2004 to avoid the abandonment of the application.

An issue fee payment in the amount of \$1,300 was received in the USPTO on August 26, 2003. However, since no Notice of Allowance and Issue Fee(s) Due was mailed prior to the payment thereof, this fee is considered to have been prematurely paid. There is no indication in the record, and petitioner herein has confirmed, that no reply to the February 5, 2004 Notice of Allowance and Issue Fee(s) Due has been submitted.

37 CFR 1.313(c)(2) provides for withdrawal of an application from issue after payment of the issue fee. In the instant case, as noted above, the issue fee in reply to the Notice of Allowance of February 5, 2004 has not been received. Therefore, the filing of a petition to withdraw this application from issue is unnecessary at this time. The mere filing of a Request for Continued Examination (RCE) under 37 CFR 1.114 and submission will effectively

withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. Note MPEP 706.07(h)(IX).

No fee has been assessed for the instant petition to withdraw from issue. However, as authorized, the \$770 fee due for the RCE will be charged to petitioner's deposit account.

Inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This file will be forwarded to Technology Center AU 2684 for appropriate processing of the RCE filed March 8, 2004 and consideration of the IDS submitted concurrently therewith.



Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy